

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE  
DIRECTOR

May 13, 1992  
AO-92-09

Daniel F. Conley, Esq.  
55 Badger Road  
Hyde Park, MA 02136

Re: Leave of Absence

Dear Mr. Conley:

This letter is in response to your April 6, 1992, letter requesting an advisory opinion regarding the above referenced matter.

You have stated that you are an Assistant District Attorney employed by the Commonwealth of Massachusetts. As a result of your employment, you believe that you are prohibited from directly or indirectly raising or soliciting political contributions for your campaign. It is also your understanding that the Conley Committee, a political committee organized to elect you state representative, may solicit contributions on your behalf.

You have asked if your appointing authority grants you a "leave of absence" during which you receive no compensation nor "employee benefits" of any kind, whether you may then solicit contributions for your campaign?

M.G.L. c.55, s.13 provides, in pertinent part:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purposes whatever. . . .

Since you are a person employed for compensation,<sup>1</sup> you would be subject to the prohibition set forth in section 13.

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1. I note that no provision of M.G.L. c.55, including section 13, mandates that a public employee relinquish his or her employment or take a leave of absence in order to seek elected office. Since the issues you present raise questions on the conflict-of-interest law, M.G.L. c.268A, I suggest that you also consult the State Ethics Commission on this matter.

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However, this Office has advised on numerous occasions that public employees wishing to participate in fundraising activities in connection with a campaign are exempt from the requirements of section 13 if they take an unpaid leave of absence of at least four months prior to a primary election or at least six months prior to a general election. See AO-92-07 and advisory opinions cited therein. Similarly, if you take such an unpaid leave of absence, this Office would not consider you to be a person in the service of the commonwealth for purposes of M.G.L. c.55, s.15. Therefore, you would also not be subject to that section's prohibitions.<sup>2</sup>

While you indicate that you are aware of the requirements of M.G.L. ss. 13-17, I will nonetheless note the provisions of the relevant sections of the law.

Section 14 of M.G.L. c.55 states: "No person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for the purposes set forth in section thirteen."

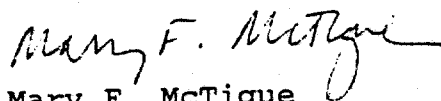
Section 16 of M.G.L. c.55 states: "No person in the public service shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so."

Section 17 of M.G.L. c.55 states: "No officer or employee of the commonwealth or of any county, city or town shall discharge, promote, or degrade an officer or employee, or change his official rank or compensation, or promise or threaten so to do, for giving, withholding or neglecting to make a contribution of money or other valuable thing for a political purpose."

This opinion has been based solely upon the representations set forth in your letter and solely within the context of M.G.L. c.55.

Please do not hesitate to contact this Office should you have further questions regarding this or any other campaign finance matter.

Very truly yours,



Mary F. McTigue  
Director

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2. Section 15 of M.G.L. c.55 states: No officer, clerk or other person in the service of the commonwealth or of any county, city or town shall, directly or indirectly, give or deliver to an officer, clerk or person in said service, or to any councillor, member of the general court, alderman, councilman or commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever.